

109TH CONGRESS
1ST SESSION

H. R. 2741

To amend the Small Business Act to provide a penalty for the failure by a Federal contractor to subcontract with small businesses as described in its subcontracting plan, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2005

Mr. WYNN introduced the following bill; which was referred to the Committee on Small Business

A BILL

To amend the Small Business Act to provide a penalty for the failure by a Federal contractor to subcontract with small businesses as described in its subcontracting plan, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Subcontractor Protec-
5 tion Act”.

1 **SEC. 2. IMPLEMENTATION OF SUBCONTRACTING PLANS.**

2 Section 8(d) of the Small Business Act (15 U.S.C.
3 637(d)) is amended by adding at the end the following
4 new paragraphs:

5 “(12) In the case of any contract containing a sub-
6 contracting plan included pursuant to paragraph (4) or
7 (5), the following provisions apply:

8 “(A) The Federal agency awarding the contract shall
9 include in the contract a clause providing for the with-
10 holding of not less than (i) \$5,000 in the case of a contract
11 in the amount of \$100,000 or less, (ii) 3 percent of the
12 contract amount in the case of a contract in an amount
13 of more than \$100,000 and less than \$5,000,000, and (iii)
14 5 percent of the contract amount in the case of a contract
15 in an amount of \$5,000,000 or more, if the contractor
16 does not achieve the percentage goal for the utilization of
17 small business concerns owned and controlled by socially
18 and economically disadvantaged individuals as set forth in
19 the subcontracting plan.

20 “(B) The Federal agency awarding the contract shall
21 require the contractor to provide written justification to
22 the agency whenever the contractor, in performing the
23 contract, does not enter into a subcontract with, or sub-
24 stitutes another subcontractor for, a specific small busi-
25 ness concern identified in the subcontracting plan.

1 “(13) The Administration shall establish a telephone
 2 line or other electronic means of communication through
 3 which any small business concern identified in a subcon-
 4 tracting plan by an offeror or bidder may communicate
 5 to the Administration any concerns regarding major devi-
 6 ations by prime contractors from the use of small business
 7 concerns as subcontractors under the prime contract as
 8 described in subcontracting plans.”.

9 **SEC. 3. REQUIREMENT TO CONSIDER USE OF SMALL BUSI-**
 10 **NESS CONCERNS OWNED AND CONTROLLED**
 11 **BY SOCIALLY AND ECONOMICALLY DIS-**
 12 **ADVANTAGED INDIVIDUALS WHEN CONSID-**
 13 **ERING PAST COMPLIANCE WITH SUBCON-**
 14 **TRACTING PLANS.**

15 Paragraphs (4)(C) and (5)(B) of section 8(d) of the
 16 Small Business Act (15 U.S.C. 637(d)) are each amended
 17 in the second sentence by inserting “, especially compli-
 18 ance with the goal set forth in such plans for the utiliza-
 19 tion of small business concerns owned and controlled by
 20 socially and economically disadvantaged individuals,” after
 21 “other such subcontracting plans”.

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